



Brussels, 6 June 2005

European Commission - DG Taxation and Customs Union

Code of Conduct for business taxation

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Code of Conduct

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- **Political commitment (Council resolution of Dec. 1997), not creating new Community competencies (no harmonisation)**
- **Concerns tax measures which affect, or may affect, the location of business activity**
- **Includes laws, regulations and administrative practices**
- **Measures are potentially harmful if they provide for a significantly lower level of taxation than the general level in the MS concerned**
- **Both standstill and rollback provisions**



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Assessment of harmfulness should, inter alia, take into account:

- 1. Whether advantages are accorded only to non-residents or in respect of transactions with non-residents**
- 2. Whether advantages are ring-fenced from the domestic market (does not affect national tax base)**
- 3. Whether advantages are granted even without real economic activity and substantial economic presence**
- 4. Whether the rules on profit determination deviate from internationally accepted principles (notably OECD)**
- 5. Whether the tax advantages lack transparency**



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- **Code Group report of Nov. 1999: 66 harmful tax measures (40 in the old 15 MS, 3 in Gibraltar, 23 in dependent or associated territories)**
- **Report includes footnotes with MS reservations**
- **Nov. 2000 ECOFIN Council agreement of timetable for rollback (abolish measures by end 2002; no benefits beyond end 2005)**
- **Group fulfilled work on rollback proposals, standstill and transparency/exchange of information in the area of transfer pricing**



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- **June 2003 ECOFIN Council agreement on the tax package:**
 - **adequacy of rollback proposals**
 - **extension of benefits for some existing beneficiaries**
- **In 2003, 30 harmful measures in the 10 new MS were identified and rollback was agreed**
- **Now monitoring of standstill and rollback**
- **Future of the Code of Conduct?**



Code of Conduct and State aid

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- **Based on the State aid provisions of the EC Treaty: any aid which distorts or threatens to distort competition shall, in so far as it affects trade between MS, be incompatible with the common market**
- **Code of Conduct notes Commission's intention to apply rules strictly and to examine or re-examine existing tax arrangements and proposed new legislation, taking into account the insights from the application of the Code**